

FEDERAL MAIL SECTION

Before the
Federal Communications Commission
APR 1 1993 Washington, D.C. 20554

DISPATCH MM Docket No. 93-94

In re Applications of

Scripps Howard File No. BRCT-910603KX
Broadcasting Company

For Renewal of License of
Station WMAR-TV,
Baltimore, Maryland

and

Four Jacks File No. BPCT-910903KE
Broadcasting, Inc.

For a Construction Permit for
a New Television Facility on
Channel 2 at Baltimore, Maryland

HEARING DESIGNATION ORDER**Adopted: March 22, 1993;****Released: April 1, 1993**

By the Chief, Video Services Division:

1. The Commission, by the Chief, Video Services Division, acting pursuant to delegated authority, has before it: (1) the application for renewal of license of station WMAR-TV, Channel 2, Baltimore, Maryland, filed by Scripps Howard Broadcasting Company ("Scripps"), and the mutually-exclusive application of Four Jacks Broadcasting, Inc. ("Four Jacks") for a new commercial television station to operate on Channel 2, Baltimore, Maryland; (2) a petition to deny Four Jacks' application, filed by Scripps, and various responsive pleadings; (3) a petition to dismiss Four Jacks' application, filed by Scripps, and various responsive pleadings.¹

2. Four Jacks specifies a tower height of 381 meters. However, the record height for the specified tower is only 368.5 meters due to the removal of an antenna from the tower in 1987. Thus, it is not clear that the Federal Aviation Administration has approved the proposed tower increase to 381 meters and that the proposal would not constitute a hazard to air navigation. While these discrepancies do not render the application substantially in-

complete, an appropriate issue will be specified to determine whether the tower would constitute a hazard to air navigation.

3. In its Petition to Dismiss, Scripps alleges that the Four Jacks application should not have been accepted for filing because to do so would be a violation of Section 73.3518 of the Rules, which provides, "While an application is pending and undecided, no subsequent inconsistent or conflicting application may be filed by or on behalf of or for the benefit of the same applicant, successor or assignee." Chesapeake Television ("Chesapeake"), the licensee of Station WBFF(TV), Channel 45, (Baltimore, Maryland), is owned indirectly (through Sinclair Broadcast Group, Inc.) by the principals of Four Jacks. Chesapeake filed its license renewal on June 1, 1991. The application was granted September 26, 1991, and thus the renewal application was outstanding when the present application was filed on September 3, 1991. Scripps further alleges that grant of the present application would place the principals of Four Jacks in violation of Section 73.3555 of our Rules. We disagree that the inconsistent application rule precludes our consideration of Four Jacks' application. That rule was not intended to apply to circumstances such as those before us. In the application before us, the principals of Four Jacks have pledged to divest their interests in WBFF(TV) if Four Jacks is the successful applicant. Chesapeake's application for station WBFF(TV) has been granted. Clearly, it would be unfair to require the principals of Four Jacks to give up all interests in WBFF(TV) merely in order to compete for a channel 2 facility. The divestiture pledge removes any concern as to a violation of Section 73.3555 of our Rules. However, any grant of Four Jacks' application will be conditioned appropriately to require divestiture of all interests in WBFF(TV). The Petition to Dismiss will be denied.

4. Except as indicated by the issue specified below, the applicants are qualified to proceed as proposed. Since the applications are mutually exclusive, the Commission is unable to make the statutory finding that their grant will serve the public interest, convenience, and necessity. Therefore, the applications must be designated for hearing in a consolidated proceeding on the issues specified below.

5. Accordingly, IT IS ORDERED, That, pursuant to Section 309(e) of the Communications Act of 1934, as amended, the applications ARE DESIGNATED FOR HEARING IN A CONSOLIDATED PROCEEDING, to be held before an Administrative Law Judge at a time and place to be specified in a subsequent Order, upon the following issues:

1. To determine with respect to Four Jacks whether there is reasonable possibility that the tower height and location proposed would constitute a hazard to air navigation.
2. To determine which of the proposals would, on a comparative basis, better serve the public interest.

¹ In its petition to deny, Scripps alleges: 1) that Four Jacks' application is substantially incomplete due to inconsistencies concerning Four Jacks' antenna; 2) that Four Jacks has failed to identify a safe transmitter site; 3) that Four Jacks will be incapable, because of its miscalculations of costs, of constructing

and operating the station; and 4) that Four Jacks may lack the requisite character to be a Commission licensee. To the extent that the pleading is a pre-designation petition to specify issues, it will be dismissed. *Processing of Contested Broadcasting Applications*, 72 FCC2d 202 (1979).

3. To determine, in light of the evidence adduced pursuant to the foregoing issues, which of the applications should be granted.

6. IT IS FURTHER ORDERED, That the Petition to Deny filed by Scripps IS DISMISSED, and the Petition to Dismiss IS DENIED.

7. IT IS FURTHER ORDERED, That the Federal Aviation Administration IS MADE A PARTY RESPONDENT to this proceeding with respect to issue 1.

8. IT IS FURTHER ORDERED, That, in the event of the grant of Four Jacks' application for a construction permit for a television station to operate on channel 2 in Baltimore, Maryland, Four Jacks and its principals shall, upon commencement of operations on channel 2, certify to the Commission that they have severed all interest in and connection with television station WBFF(TV), Baltimore, Maryland.

9. IT IS FURTHER ORDERED, That a copy of each document filed in this proceeding subsequent to the date of adoption of this Order shall be served on the counsel of record in the Hearing Branch appearing on behalf of the Chief, Mass Media Bureau. Parties may inquire as to the identity of the counsel of record by calling the Hearing Branch at (202) 632-6402. Such service shall be addressed to the named counsel of record, Hearing Branch, Enforcement Division, Mass Media Bureau, Federal Communications Commission, 2025 M Street N.W., Suite 7212, Washington, D.C. 20554. Additionally, a copy of each amendment filed in this proceeding subsequent to the date of adoption of this Order shall also be served on the Chief, Video Services Division, Mass Media Bureau, Federal Communications Commission, Room 700, 1919 M Street, N.W., Washington, D.C. 20554.

10. IT IS FURTHER ORDERED, That to avail themselves of the opportunity to be heard, the applicants and any party respondent herein shall, pursuant to Section 1.221(c) of the Commission's Rules, in person or by attorney, within 20 days of the mailing of this Order, file with the Commission, in triplicate, a written appearance stating an intention to appear on the date fixed for the hearing and present evidence on the issues specified in this Order.

11. IT IS FURTHER ORDERED, That the applicants herein shall, pursuant to Section 311(a)(2) of the Communications Act of 1934, as amended, and Section 73.3594 of the Commission's Rules, give notice of the hearing within the time and in the manner prescribed in that Rule, and shall advise the Commission of the publication of this notice as required by Section 73.3594(g) of the Rules.

FEDERAL COMMUNICATIONS COMMISSION

Barbara Kreisman, Chief
Video Services Division
Mass Media Bureau